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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of )  
 )  
 Implementation of Section 9 )  
 of the Communications Act )  
 )  
 Assessment and Collection of )  
 Regulatory Fees for the 1994 )  
 Fiscal Year )

MD Docket No. 94-19

To: The Commission

**REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY**

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, submits these Reply Comments in the above-captioned proceeding.

**I. INTRODUCTION**

PRTC is a local exchange carrier wholly owned by the Puerto Rico Telephone Authority, which is a government instrumentality of the Commonwealth of Puerto Rico. As PRTC noted in its initial Comments, it supports the Commission's proposal to apply the governmental entity definition in section 1.1112(f) of the Commission's Rules to the governmental entity exemption established in section 9(h) of the Communications Act. That policy, which is mandated by Congress and grounded in Commission practice, serves the important goal of not shifting the Commission's regulatory

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costs to state and local governments in the form of processing fees.

Notwithstanding the Commission's longstanding practice of exempting governmental entities from certain regulatory fees — and the strong policy considerations underlying the exemption — one commenter in this proceeding advocates scaling back the governmental entity exemption. Cellular Communications of Puerto Rico, Inc. ("Cellular Communications") maintains that the Commission should limit the governmental entity exemption to governmental entities offering service on a noncommercial basis. Comments of Cellular Communications, at 7.

Specifically, Cellular Communications argues that it is unfair that a governmental entity such as PRTC is exempted from paying regulatory fees while Cellular Communications competes with it in Puerto Rico's cellular markets. Cellular Communications also asserts that, in adding the section 9(h) governmental exemption to the Communications Act in 1993, Congress did not intend to create an exemption for providers of commercial communications services. For these reasons, Cellular Communications maintains that the Commission should rewrite the governmental entity definition that has been part of the Commission's Rules since 1987. Comments of Cellular Communications, at 3-7.

Notwithstanding these arguments, Congress has made it clear that governmental entities shall be exempted from

having to pay regulatory fees. Nothing in the legislative history of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") suggests that Congress intended to exempt only some governmental entities. Moreover, the Commission's definition of governmental entity and its application of that definition have been on record for many years. If Congress intended to have the Commission change its practice, Congress could have so ordered. It did not so order, however, and the Commission's definition of governmental entity should remain unchanged.

## **II. SECTION 9(h) OF THE COMMUNICATIONS ACT PLAINLY EXEMPTS GOVERNMENTAL ENTITIES**

Section 9(h) of the Communications Act provides that the regulatory fees established under section 9 "shall not be applicable to (1) governmental entities or nonprofit entities; or (2) to amateur radio operator licenses under Part 97 of the Commission's regulations (47 C.F.R. Part 97)." Budget Act, Pub. L. No. 103-66, § 6003, 107 Stat. 312, 401 (1993) (emphasis added).

Section 9(h) plainly exempts governmental entities from paying the regulatory fees established under section 9. Indeed, nothing in section 9(h) suggests that Congress meant to exempt only some governmental entities and not others. There is no qualifying language set forth by Congress, nor is there criteria for separating different types of

governmental entities. The plain language of section 9(h) evidences the design of Congress to see that all governmental entities are exempted from paying the regulatory fees established in section 9.

**III. NOTHING IN THE LEGISLATIVE HISTORY OF SECTION 9(h) SUGGESTS THAT CONGRESS DID NOT INTEND TO EXEMPT ALL GOVERNMENTAL ENTITIES**

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The legislative history of section 9(h) is as clear as the language in the statute. House Conference Report 103-213, which accompanied the Budget Act, discusses new section 9 of the Communications Act only in very brief fashion. H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess. 499, reprinted in 1993 U.S.C.C.A.N. 1088, 1188 ("Conference Report"). Although the Conference Report does not treat section 9(h), it does incorporate by reference the provisions of a 1991 committee report that accompanied "virtually identical" legislation which was never enacted. Id. (incorporating H.R. Rep. No. 207, 102d Cong., 1st Sess. (1991)).

That House Report underscores the intent of Congress to exempt all governmental entities from paying Commission regulatory fees. The Report reads:

The legislation includes as "feeable" all entities regulated by the FCC, with the exemption of amateur radio operators, and public safety and noncommercial users. It also provides a general exemption for governmental entities and non-profit entities holding tax exempt status under section 501(c)(3) of the Internal Revenue Code.

H.R. Rep. No. 207, 102d Cong., 1st Sess. 11 (1991) (emphasis added).

Plainly, if Congress had intended to exempt only governmental entities offering noncommercial services, it would not have provided "a general exemption for governmental entities." Nor would it have distinguished "governmental entities" from "public safety and noncommercial users." Indeed, as Cellular Communications itself points out, the House Report even clarifies noncommercial users to mean "public television and radio licensees." Id. at 16.

Thus, notwithstanding Cellular Communications' assertion that Congress meant to exclude only governmental entities involved in noncommercial activities (Comments of Cellular Communications, at 4), nothing in the legislative history of section 9(h) suggests that Congress intended to exempt only some governmental entities. Rather, Congress intended to exempt all governmental entities without distinction. In that regard, the legislative history is as clear as the exemption that was enacted.

#### **IV. CONGRESS HAS IMPLICITLY SANCTIONED THE COMMISSION'S GOVERNMENTAL ENTITY TREATMENT**

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Not only has Congress made it clear through the language of section 9(h) and its legislative history that it intended to exempt all governmental entities, Congress has

expressed that design by implicitly sanctioning the Commission's treatment of governmental entities. The Commission's definition of governmental entity implementing section 8(d)(1) and its application of that definition have been on record since 1987. If Congress intended to have the Commission change its practice for the purpose of implementing section 9, Congress could have so ordered.

For example, in the Notice of Proposed Rulemaking establishing the definition of governmental entity set forth at 47 C.F.R. § 1.1112(f), the Commission explained that it had previously exempted only governmental entities providing nonprofit radio services for public safety, health, and welfare. Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Notice of Proposed Rulemaking, FCC 86-301, 51 Fed. Reg. 25792, 25799 (1986). With respect to the governmental entity exemption added with section 8(d)(1), however, the Commission explained, "We tentatively conclude that the new Communications Act language establishes a fee exemption for governmental entities regardless of the radio service for which they apply." Id. The Commission continued:

[T]he traditional health and safety roles of government are subject to change. Governments are today involved in many communications services. Our general exemption for governmental entities provides for this changing role by exempting government entities from fees in any communications service.

Id. (footnote omitted) (emphasis added).

In a footnote to that discussion, the Commission pointed to a 1984 Act of Congress permitting states to hold ownership interests in cable television systems as evidence that governments were involved in many communications services. Id. at 25799 n.61. Based on this reasoning — and following public scrutiny and comment — the Commission adopted the definition of governmental entities proposed in that discussion. See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947, 960 (1987).

In 1989 Congress revisited section 8 of the Communications Act by amending the schedule of Commission regulatory fees and by altering the section 8(d)(1) exemptions to conform to the schedule amendments. See Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 3001, 103 Stat. 2106, 2124-2131 (1989). In doing so, however, Congress preserved all existing fee exemptions for governmental entities. See id. at 2131. See also Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, 5 FCC Rcd 3558, 3573 (1990) (noting that the existing governmental entity exemption remained unchanged).

Plainly, if Congress disagreed with the Commission's decision to apply the section 8(d)(1) governmental entity

exemption to all such entities (regardless of commercial status), Congress could have clarified the exemption in the 1989 Budget Act. It did not do so, however. Moreover, cognizant of the Commission's consistent application of the section 8(d)(1) exemption in that fashion, Congress did not amend the governmental entity exemption enacted in section 9(h) in 1993.

In short, the Commission has defined governmental entity to include all such entities without regard to the commercial status of the service being performed, and it has applied that definition consistently since 1987. In that same period, Congress has had occasion to revisit the Commission's governmental entity exemptions and has never amended the provisions. Congress has implicitly sanctioned the Commission's treatment of governmental entities. Thus, the Commission's definition of governmental entity should remain unchanged, and it should be applied to the exemption established in section 9(h).

#### **V. CONCLUSION**

For these reasons, PRTC urges the Commission to apply the definition of governmental entity set forth in section 1.1112(f) of the Commission's Rules, 47 C.F.R. § 1.1112(f),



to the governmental entity exemption established in section  
9(h) of the Communications Act.

Respectfully submitted,



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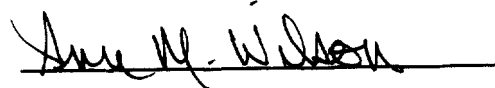
Attorneys for  
PUERTO RICO TELEPHONE  
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April 18, 1994

**CERTIFICATE OF SERVICE**

I, Ann M. Wilson, hereby certify that a copy of the foregoing Reply Comments of Puerto Rico Telephone Company was mailed, postage prepaid, this 18th day of April, 1994 to the following:

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A handwritten signature in cursive script, reading "Ann M. Wilson", is written over a horizontal line.

Ann M. Wilson